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No. 88-586

In The
Supreme Court of the United States
October Term, 1988

GERTRUDE M. STUART and FERNAND DANIS,
Petitioners,

v.

METROPOLITAN LIFE INSURANCE COMPANY,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

Respondent, Metropolitan Life Insurance Company, (sometimes hereinafter referred to as "Metropolitan") respectfully requests that this Court deny the petition for a writ of certiorari, seeking review of the First Circuit's judgment in this case. The First Circuit's opinion is reported at 849 F.2d 1534 (1988).

STATEMENT OF THE CASE

Petitioners, William Stuart and Fernand Danis, worked as hourly employees of the General Electric Com-

pany ("GE") in South Portland, Maine. A7.[1] GE and unions representing its unionized employees negotiated the terms of a Long Term Disability Plan (the "Plan"), governed by the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). A5, A7, A9. GE made the Plan available on identical terms to union and nonunion employees. A7. Participaton in the Plan was voluntary and participants paid the entire premium. *Id.*

To make Plan benefits available to its employees, GE obtained a group insurance policy from Metropolitan, which incorporated the Plan by reference. A7. GE, not Metropolitan, is the Plan Administrator. A9. Metropolitan has responsibility for processing all claims and reviewing claims determinations under the Plan. A10-A11.

Both petitioner Stuart, a union member, and petitioner Danis, a nonunion employee, chose to participate in the Plan. *Id.* The Plan expressly provided that:

> Benefits will be paid monthly and will be one twenty-fourth of your normal straight-time annual earnings reduced by * * * (2) any primary Social Security benefits. * * * If the benefits referred to in (2) * * * would have been payable to you upon timely application, you will be considered as receiving such benefits. However, in no event, will the reductions referred to in * * * (2) be used to reduce the monthly benefit otherwise payable to less than $50 a month.

A8. The Summary Plan Descriptions furnished to both petitioners pursuant to § 101(a)(1) of ERISA also plainly stated that a reduction of Plan benefits would occur, based

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[1]All "A" references are to the Appendix of the Petition for a Writ of Certiorari (the "Petition").

upon petitioners' receipt of Social Security benefits. A13, n. 11.

Both petitioners claimed long term disability benefits under the Plan. A8. When they submitted their claims, GE required them to sign Reimbursement Agreements by which they certified that they had made timely application for Social Security disability benefits. *Id.* The Agreements further provided that Metropolitan would, at that time, refrain from deducting estimated Social Security benefits from petitioners' monthly Plan benefits, provided that petitioners agreed to reimburse Metropolitan in full upon their receipt of any retroactive Social Security disability award. *Id.* The Agreement authorized Metropolitan to withhold or reduce petitioners' future long term disability benefits in the event that it became necessary to do so in order to obain reimbursement of Plan funds petitioners were required to repay. *Id.*

Both petitioners applied for Social Security disability benefits. A8. Both initial applications were denied. *Id.* Because petitioners had signed Reimbursement Agreements, Metropolitan commenced payment of the full, unreduced disability benefits available to them under the Plan. *Id.*

Both petitioners' Social Security disability benefits denials were subsequently reversed and both received retroactive Social Security disability awards. *Id.* As a result, Metropolitan sought reimbursement from petitioners due to the duplicative Plan benefits they had received. A8-A9. Both petitioners refused to make such reimbursement. A9. Metropolitan therefore commenced recoupment of the duplicative amount by withholding payment

of petitioners' future Plan benefits. *Id.* Petitioners initiated the instant lawsuit to challenge that recoupment. *Id.*

REASONS WHY THE PETITION SHOULD BE DENIED

1. The Judgment of the Court of Appeals Rests on the Plain, Unambiguous Language of the Plan; Because that Language Provides a Firm Basis for the Court's Judgment, This Court Need Not Reach the Constitutional Questions Petitioners Now Raise.

This Court has a "duty to avoid decision of constitutional issues unless avoidance becomes evasion" and therefore will generally refrain from reaching alleged constitutional issues unless their resolution is necessary to the final disposition of an action. *Rice v. Sioux City Memorial Park Cemetery, Inc.*, 349 U.S. 70, 74 (1955); *Rescue Army v. Municipal Court of Los Angeles*, 331 U.S. 549 (1947); *see also Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813, 828-29 (1986). In the instant case, petitioners have previously been afforded the very relief which they contend constitutional analysis of their claim would require. Since this dispute would be resolved in precisely the same way, whether or not the constitutional analysis were performed, determination of the constitutional issues is totally unnecessary. This Court therefore has a "duty" to refrain from reaching the constitutional issues petitioners now raise. *Id.*[2]

[2]The court below, basing its holding on its own determination as to the meaning of the relevant contractual terms, did not even *mention* the constitutional issues petitioners raise.

Petitioners claim the United States Constitution requires this Court to determine whether petitioners' claims are entitled to *de novo* review by the court below. Virtually absent from petitioners' papers is any mention of the underlying claim to which the proposed *de novo* review would apply, although it is so urgently claimed to be needed. Petition at 15. There is a reason. Examination of petitioners' central claim, and of the full analysis it received by the court below, reveals that the equivalent of *de novo* review has already been afforded petitioners, and that after such review, petitioners have been denied *double* recovery of disability benefits under traditional principles of contract construction.

Petitioners claimed that Plan language authorizing Metropolitan to offset "any" Social Security benefits against disability benefits payable under the Plan was ambiguous because it did not further specify that "any" included *retroactive* benefits. *See* Petition at 4, 5, and A22. According to petitioners, the Plan should therefore have been interpreted to preclude such offsets. *See* A13-A14.

It is hornbook law that under traditional principles of contract construction, insurance policies are subject to interpretation only if they are ambiguous; where no ambiguity exists, plain, unambiguous terms must be enforced:

> [C]ourts have adopted a general doctrine to the effect that the rule of construing contracts stringently against the insurer and liberally to favor the insured is to be applied *only when the language in the policy contract is ambiguous. If the language employed is unambiguous, this doctrine has no application, since the rights of the parties must then be determined from the contract.* * * *

13 J. A. Appleman, Insurance Law and Practice § 7402 (1976) (emphasis added); *see also id.*, pocket part (1988). Thus, if the terms of a contract are *not* ambiguous, *there is nothing to interpret,* and the court is required to give them their plain meaning. *See id.; see also* Restatement (Second) of Contracts § 202 (1981). The latter hornbook law was recited by the District Court, A13, and has been consistently applied by other federal courts, including those in the First Circuit. *See, e.g.,* the hundreds of cases cited in Appleman, *supra,* §§ 7401, 7402; *Mutual Fire, Marine and Inland Ins. Co. v. Costa,* 789 F.2d 83, 87 (1st Cir. 1986); *Palmer v. Mutual Life Ins. Co.,* 324 F. Supp. 254, 256-57 (S.D. Me. 1971).

The Court of Appeals, for the reasons set forth in the sixteen-page opinion of the District Court, found petitioners' argument that certain Plan terms were ambiguous "to be without merit." A14. Indeed, the Judgment of the Court of Appeals rests on the following dispositive finding relevant to the issue central to this case:

> The *plain and unambiguous language of the Plan* * * * provides that monthly benefits under the Plan *will be reduced* by *any* Social Security benefits. The S[ummary] P[lan] D[escriptions] furnished to P[etitioners] also provided that Social Security benefits would reduce the amount of monthly benefits under the Plan.

A13 (emphasis added). The court went on to find that "it would be *illogical* to construe the contract language [at issue] to mean that, because Social Security payments were delayed and then paid in a lump sum, the insured would be entitled to full Plan benefits *and* the Social Security

payment'' they had received.[3] A14 (emphasis added). The court therefore completely rejected petitioners' suggested interpretation of the relevant Plan language.

Petitioners wrongly suggest ''[t]hat *review* under the arbitrary and capricious standard''—as opposed to *de novo* review—''ma[de] a significant difference'' in the decision below, rendering it unconstitutional. Petition at 6 (emphasis added). Petitioners are in error. Although the court below purported to perform its analysis of petitioners' claim under the arbitrary and capricious standard of review, A12, on the issue central to this case, the court in fact conducted a *de novo* review.[4] It made *its own in-*

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[3]Petitioners suggested "interpretation" of the Plan would unfairly entitle petitioners to retain a windfall of duplicative benefits while depriving other similarly-situated Plan participants of the same entitlement. Petitioners complained that the Plan was ambiguous *only* insofar as it permitted Metropolitan to recoup Plan benefits after a *retroactive* Social Security disability award; they did not dispute Metropolitan's right to offset *simultaneous* Plan benefits. A13-A14; *see also* Petition at 4. Petitioners are therefore forced into the untenable position of maintaining that Metropolitan may reduce, *ab initio*, the benefits paid to Plan participants who receive simultaneous Social Security disability awards but may *not* reduce the benefits paid to Plan participants, such as petitioners, who receive retroactive Social Security awards (and, perhaps, were less obviously disabled than the Plan participants who received such awards in the first instance). According to petitioners, their retention of a windfall in duplicative benefits is mandated by the due process clause; petitioners are considerably less concerned about the possible equal-protection shortcomings of their argument.

[4]Respondent does not suggest that courts, in applying the arbitrary and capricious standard of review, ordinarily do or should conduct their own, independent review, or are or should be limited by traditional principles of contract construction. Indeed, respondents maintain that in civil ERISA actions, the

(Continued on following page)

quiry to determine "the correct interpretation of the Plan's provisions" which petitioners claimed were ambiguous.[5] *Id.* It found those provisions "plain and *un*ambiguous." A13 (emphasis added). Its findings were entirely consistent with the traditional principles of contract interpretation that are generally applied when a court affords *de novo* review.[6]

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court is only required to determine if the claim determination at issue is supported by a rational basis. *See, e.g., Jestings v. New England Telephone & Telegraph Co.*, 757 F.2d 8, 9 (1st Cir. 1985) (trustee's interpretation of plan terms must control unless it is arbitrary and capricious or without rational basis). In the instant case, the court below nevertheless conducted its own review and relied on traditional principles of contract construction in reaching its conclusion.

[5]The District Court did not, as petitioners suggest defer to Metropolitan. The District Court examined the disputed terms "initially," without reference to Metropolitan's interpretation of Plan terms until it had reached its own conclusion. A12-A13.

[6]Because the Third Circuit, in *Bruch v. Firestone Tire & Rubber Co.*, 828 F.2d 134 (3d Cir. 1987), *cert. granted*, — U.S. —, 108 S. Ct. 1288 (1988), required that certain civil ERISA plaintiffs be afforded *de novo* review, petitioners make a special, misleading effort to bring this action within the ambit of *Bruch*, ignoring the fact that they have already obtained *de novo* review's equivalent. While respondent does not endorse the result reached by the Third Circuit in *Bruch*, petitioners would be unable to ride into court on the coattails of *Bruch* even if the District Court had not previously afforded them the review they seek. The Third Circuit found in *Bruch* that the employer—the "sole source of funding for the plan" there at issue—was also the "plan administrator" and "trustee." 828 F.2d at 136, 144. Because the court determined that the plan was "controlled entirely by the employer," it found "no assurance of the trustee's impartiality," thereby requiring, in the court's opinion, that the trustee's decisions be afforded *de novo* review. *Id.* at 144. *Bruch* is therefore inapposite. Metropolitan does *not* play the same role here as the employer did in *Bruch*. The District Court noted below that GE—*not* Metropolitan—is the Plan Administrator, A9, and that GE, together with its unions—*not* Metropoli-

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The inquiry made by the District Court on the issue central to petitioners' complaint, although it occurred in the context of a civil ERISA action, was therefore precisely the same as the inquiry that would have been made by a court performing *de novo* review *outside* the context of ERISA. *See, e.g., Mutual Fire, Marine and Inland Ins. Co. v. Costa*, 789 F.2d at 87; *Palmer v. Mutual Life Ins. Co.*, 324 F. Supp. at 256-57. There is consequently no need for this Court to resolve the constitutional issues petitioners now raise in order to determine whether petitioners should be afforded *de novo* review—they have already obtained its equivalent and have been told that their position is "without merit."

Petitioners mistakenly maintain that the result reached by the District Court would have differed if the court had applied the standard relied on in *Bush v. Metropolitan Life Ins. Co.*, 656 F.2d 231 (6th Cir. 1981).[7] In *Bush*, the Sixth Circuit found that the language there at issue *was* ambiguous. Under traditional principles of contract law, the court then went on to reach the question of how the ambiguous language should be interpreted.

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tan—negotiated and drafted the controlling Plan terms. A7, A9, A15, n. 13. Moreover, because the instant Plan, unlike the plan at issue in *Bruch*, is funded by employee, not employer, contributions, it is overseen by a *disinterested* Plan Administrator. The "assurance of impartiality" found to be lacking in *Bruch* is therefore present in the instant case.

[7]Contrary to petitioners' contention that the language here at issue was "essentially the same" as the language at issue in *Bush*, Petition at 6, the court below expressly found that the ambiguous language "in *Bush* was *not* included in the contracts of the Plaintiffs in this case." A15 (emphasis added).

Here, the court below found that the language at issue was *not* ambiguous. Therefore, under the same traditional principles of contract law, there was nothing in the contract for the court to interpret, and the court was required to give the Plan's terms their plain meaning. However, even if the court below *had* been required, under traditional principles of contract construction, to reach petitioners' suggested interpretation of the Plan as the Sixth Circuit did in *Bush*, petitioners would have obtained no relief. The court below indicated that it found petitioners' interpretation "illogical" and "without merit." A14.

Before petitioners rush to this Court claiming to be the standard-bearers of constitutional questions others have "[u]nfortunately" failed to raise, petitioners should focus on what *they* have failed to say.[8] Petitioners have failed to state that the instant case has been properly resolved under traditional principles of contract construction. Petitioners have ignored the fact that they have previously obtained the equivalent of the very relief they seek. Furthermore, it is not "*artificial*[] constrain[ts]" that bar this Court from reaching the constitutional issues petitioners present. *See* Petition at 7. This Court purposely works within the "narrow framework" disparaged by petitioners, *id.*, not only to save it from deciding every constitutional issue, no matter how lacking in merit, that comes its way, but because its jurisdiction *is* limited. Decision of the constitutional questions presented by petitioners is totally unnecessary to the final resolution of this matter. This Court therefore has a "duty" not to reach

[8]At no time did petitioners' pleadings raise a constitutional question. The only constitutional question petitioners raised was set forth in their briefs, a sample of which appears in the Appendix to the Petition at pp. A21-A35.

them. *Rice v. Sioux City Memorial Park Cemetery Inc.*, 349 U.S. at 74.

2. Petitioners Failed to Raise the Constitutionality of ERISA's Remedial Scheme Below and This Court Should Therefore Not Consider It.

Petitioners now, for the first time, maintain that ERISA *itself* is "unconstitutional." Petition at i. Petitioners not only failed to ask the court below to determine the constitutionality of ERISA, they expressly stated, before the Court of Appeals, that they did not believe ERISA *was* unconstitutional, limiting their discussion of this "important" question to the following footnote:

> ERISA does not explicitly delegate the power to conduct full and fair reviews to insurers with a direct financial interest in the claims experience under its policies. Therefore, *the question is probably not whether the statute is unconstitutional,* but whether any interpretation of it which permits a self-interested insurer to review its own claims denials subject only to deferential judicial review is constitutional.

Reply Brief of Appellants (before the First Circuit) at 17-18, n. 8 (emphasis added; emphasis in original omitted) (relevant pages reproduced in Appendix).[9] Petitioners even equivocally admit in their petition that "[i]t is probably not necessary to find any section of ERISA unconstitutional to resolve Constitutional [*sic*] dilemma presented * * *." Petition at 17.

This Court generally will not grant certiorari to decide issues which the petitioners failed to raise in proceed-

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[9]Petitioners maintained before the District Court that it was "constitutionally impermissable [*sic*] to delegate [decision-making] authority to a fiduciary" *only* "[t]o the extent that" the court "applied" a "deferential standard of review to claims decisions." A31.

ings below, regardless of their importance. *Tennessee v. Dunlap,* 426 U.S. 312, 314, n. 2 (1976); *Ernst & Ernst v. Hochfelder,* 425 U.S. 185, 194, n. 13 (1976); *see also Bankers Life and Casualty Co. v. Crenshaw,* — U.S. —, 108 S. Ct. 1645, 1649-51 (1988) (constitutional questions "vague[ly]" raised in State-court proceedings provide improvident basis for exercise of Supreme Court jurisdiction as such questions are insufficiently raised below). The Court should not deviate from its general rule in the instant case, particularly since petitioners thought so little of the first "obvious and serious Constitutional question[]" they now present, Petition at 7, that they did not brief it before the District Court and deliberately chose not to brief it before the First Circuit.

3. Assuming Arguendo that this Court Reaches the Constitutional Issues Petitioners Now Raise, Petitioners Have Failed to Demonstrate that They Have a Protected Property Interest in Receiving Duplicative Disability Benefits.

Petitioners maintain that Metropolitan's refusal to permit them to reap a windfall of duplicative benefits violates their right to due process. Petition at 7 *et seq.* Petitioners are in error. "[T]he range of interests protected by procedural due process is not infinite." *Board of Regents v. Roth,* 408 U.S. 564 (1972). Only "*protected* interests" are entitled to be scrutinized under the procedural requirements of due process. *Id.* (emphasis added). The first link in the chain of due process analysis is identification of a property interest entitled to due process protection. Petitioners point to no authority—and respondent knows of none—which supports the proposition that a person's interest in receiving *double* payment for the same

disability is protected by the United States Constitution, even when that person agreed that duplicative payments would be reimbursed. Petitioners have therefore failed to demonstrate that their alleged right to duplicative payments is entitled to protection under the due process clause.[10]

4. Assuming Arguendo that Petitioners Have a Property Interest in Duplicative Benefit Payments Entitled to Due Process Protection, They Have Failed to Show that There Is Any Additional Process to Which They Are Entitled.

Petitioners claim that the court below violated their right to due process because, in dismissing the amended complaint, it applied the allegedly deferential arbitrary and capricious standard of review. Petition at 7. Petitioners cannot simply wave a due process flag and halt all judicial proceedings pertaining to this action. Assuming *arguendo* that petitioners have a property interest entitled to due process protection, they must demonstrate that the specific dictates of due process have not been met in the instant case. They have failed to do so.

" 'The fundamental requisite of due process of law is the opportunity to be heard.' " *Goldberg v. Kelly*, 397

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[10]It is ironic to note that while petitioners take credit for raising the "obvious and serious Constitutional questions" which "[u]nfortuntely * * * have not been raised by the parties at any time in *Bruch* [*v. Firestone Tire & Rubber Co.*]," 828 F.2d 134 (3d Cir. 1987), *cert. granted*, — U.S. —, 108 S. Ct. 1288 (1988), Petition at 7, petitioners neglect to point out that in *Bruch*, the employees who sought benefits *had them denied*. Petitioners in the instant case have *obtained* the benefits they sought—they simply want a double recovery.

U.S. 254, 267 (1970) (quoting *Grannis v. Ordean*, 234 U.S. 385, 394 (1914)). "The hearing must be 'at a meaningful time and in a meaningful manner.'" *Id.* (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). To determine whether the dictates of due process have been met, this Court has held that three distinct factors must be considered:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Mathews v. Eldridge, 424 U.S. 319, 335 (1976). Petitioners completely ignore the first and third factors, choosing to focus exclusively on *part* of the second factor. For that reason alone, the petition should be denied. Moreover, even petitioners' analysis under the second factor is fatally flawed.

Petitioners' entire argument hinges on their erroneous contention that the court below erred in applying the arbitrary and capricious standard of review *instead of* conducting a *de novo* review. Petition at 15-18. Petitioners cite no authority—nor does respondent know of any—to support their novel contention that the long-used arbitrary and capricious standard of review applied in the context of an otherwise valid judicial proceeding can itself constitute a denial of due process.

More importantly, in order to prove a violation of due process under the second *Mathews* factor, petitioners must

show "the probable value, if any, of *additional* or *substitute* procedural safeguards." 424 U.S. at 335 (emphasis added). Petitioners suggest that *de novo* review is required to protect their interest in receiving duplicative disability benefits. A15. Because petitioners have previously received the equivalent of that protection,[11] due process does not require that any such "*additional* * * * safeguard" be afforded. *Id.* (emphasis added).

Petitioners' contention that the allegedly inadequate process they received created a risk of erroneous deprivation of protected property is also rebutted by the extensive, comprehensive process petitioners received. Not only do petitioners maintain that they utilized ERISA plan review procedures, *see* A10-A11, but petitioners were heard by a federal Magistrate. A6-A9. The District Court, despite extensive proceedings before the Magistrate, *heard them again,* conducted its own review and made its own findings. *See, e.g.,* A10. Petitioners' contention that they had no meaningful opportunity to be heard, like their argument concerning the alleged ambiguity in the Plan's plain terms, is utterly "without merit."

Finally, petitioners attempt to skew the required due process analysis by maintaining that the District Court "delegated" its authority to Metropolitan by application of the allegedly deferential arbitrary and capricious standard of review. It is difficult to comprehend how the sixteen-page, heavily footnoted opinion of the District Court, referring to its own research, the findings of a Magistrate, extensive papers of the parties and numerous ex-

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[11] See discussion at text, pp. 7-10, *supra*.

hibits, provides anything but a blatant refutation of petitioners' "delegation" argument.

Moreover, petitioners cite several cases that set forth the circumstances in which a judicial or quasi-judicial official or body may be precluded, by considerations of due process, from *hearing* the matter before it.[12] *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813 (1985); *Gibson v. Berryhill*, 411 U.S. 564 (1973); *Ward v. Village of Monroeville*, 409 U.S. 57 (1972); *Tumey v. Ohio*, 273 U.S. 510 (1927). Those cases are inapposite. Petitioners do not seek to bar the District Court from hearing their cause, they simply ask this Court to infer that whenever the arbitrary and capricious standard of review is mentioned in a court's opinion, due process has been violated and the court below should be directed to rehear the same cause, applying a (presumably) more plaintiff-oriented standard of review. Petitioners do not really want *additional* process; they want process that they believe *guarantees* them a *different* result.

Petitioners try to avoid the deficiencies of their argument by stating that the District Court's alleged "delegation" of authority to Metropolitan requires this Court to presume that petitioners were not heard by an "impartial" forum, Petition at 11, or that Judge Carter, who heard this matter in the District Court, was somehow impermissibly transformed into a judge in his own cause. *Id.* Petitioners are in error. The proper presumption is that judicial or quasi-judicial officers are *not* biased. *Aetna*

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[12]Petitioners were "heard" by the District Court, not by Metropolitan. Metropolitan provided claims review. A9-A11.

Life Ins. Co. v. Lavoie, 475 U.S. at 820; *Withrow v. Larkin*, 421 U.S. 35, 47 (1975). An official or judge will be barred from hearing his own cause on constitutional grounds only if explicit facts—not conclusory allegations, speculation, or presumptions—indicate sufficient interest *in the outcome of judicial proceedings* to override the presumption of impartiality the law requires. *Id.*

Petitioners point to no factor relating to Judge Carter which indicates that he had any interest in the outcome of this case that could possibly have rendered his judgment partial. Rather, petitioners argue, by reference to the arbitrary and capricious standard of review, that the presumption of impartiality historically associated with judges evaporated, that Judge Carter vanished from the scene, and that the defendant—Metropolitan—mysteriously became the judge. A more accurate way of framing petitioners' contention would be that petitioners believe Judge Carter was *wrong* in the conclusion he reached, *not* that he was partial. That belief, no matter how sincere, does not raise the "obvious and serious Constitutional questions" petitioners urge upon this Court. *See* Petition at 7.

5. An Order Directing the District Court to Conduct De Novo Review Would Be Moot; Therefore, This Court Need Not Consider Whether De Novo Review Should Be Required.

Petitioners ask this Court to consider the appropriate standard of review in civil ERISA actions and urge that this Court require *de novo* review in the instant case. The District Court *did* conduct its own review of the issue central to these proceedings. A12-A16. This Court should therefore decline to consider whether the District Court

should conduct *de novo* review, due to mootness. *See St. Pierre v. United States*, 319 U.S. 41, 42 (1943).[13]

6. Petitioners Have Failed to Show, or Even Explain, How the Ruling of the Court of Appeals that Metropolitan Did Not Violate the Anti-Alienation Provisions of the Social Security Law Conflicts with the Prior Holdings of This Court.

Petitioners maintain that the ruling of the Court of Appeals, insofar as it found that Metropolitan did not violate the anti-alienation provisions of the Social Security law, are "so directly contrary to the reasoning of this Court dealing with federal protection of benefit statutes * * * as to warrant review by the Supreme Court." Petition at 19. Petitioners, however, fail to point to any reasoning of the Court of Appeals or of this Court or to any facts in the record which support their conclusory allegation. They do not even indicate what their argument would be, if they have one.[14]

Rule 17 of this Court requires petitioners to demonstrate the "special and important reasons" why a writ of

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[13]Petitioners' additional inquiry, linked by its third question presented to the appropriate standard of review, Petition at *i*, asks whether ERISA allows insurance companies to be claims fiduciaries. Applicable regulations, while acknowledging that benefits under an employee benefit plan may be provided or administered by insurance companies, nevertheless permit those companies to process claims for benefits, while imposing an obligation on insurers to provide notice of their claims determinations and a reasonable opportunity for review. 29 C.F.R. § 2560.503-1(c), (g)(2).

[14]Because petitioners concede that Metropolitan has a right to withhold simultaneous Plan benefits, presumably without violation of the Social Security law's anti-alienation provisions, the rationale for petitioners' conclusory allegation is not transparent.

certiorari should be granted. Mere recitation of a conclusory allegation fails to meet that burden.

CONCLUSION

Because the Court of Appeals, based on the independent review of the District Court, held that the Plan terms at issue were plain and unambiguous, this Court should not reach the constitutional issues petitioners now raise or the moot question relating to the appropriate standard of review. Moreover, even assuming that this Court reached petitioners' question concerning the adequacy of the process they received, petitioners have failed to demonstrate that there are any additional safeguards needed to avoid a violation of due process—petitioners have in fact been "heard," not once, but twice, and have previously obtained the equivalent of the *de novo* review they now seek. Finally, petitioners have failed to state any reason why the question they raise concerning the anti-alienation provisions of the Social Security law

is "special and important." The petition should therefore be denied in its entirety.

Respectfully submitted,

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Counsel for Respondent

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Portland, Maine 04112-0586

Dated: New York, New York
November 4, 1988

APPENDIX

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

NO. 87-1998

GERTRUDE M. STUART,
as Personal Representative
of the Estate of William Stuart,

and

FERNAND DANNIS,
Plaintiff/Appellants

v.

METROPOLITAN LIFE INSURANCE COMPANY,
Defendant/Appellee

On appeal from the United States District Court
for the District of Maine

Civil Nos. 85-0318 P and 85-0288 P

REPLY BRIEF OF APPELLANTS

Jon Holder, Esquire
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Portland, Maine 04101
(207) 774-2899

March 23, 1988

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* * *

V

CONTRACT INTERPRETATION

* * *

Metropolitan denies that there is a constitutional issue for two reasons. First it claims that its financial stake in the outcome of its decisionmaking was too slight to make any difference. Secondly, Metropolitan denies that there is the requisite state action to evoke the protection of the constitution. Both claims are nonsense. * * *

* * *

The state action question is also illusory. The state action consists of the delegation of authority by ERISA

and federal regulation which define Metropolitan as a fiduciary with certain rights, obligations, decisionmaking and review powers. See eg. 29 U.S.C. 1002(21)(A), 29 U.S.C. 1104(a)(1) and 29 U.S.C. 1133.[8]

* * *

VI

CONCLUSION

For the reasons set forth herein, the Judgment of the District Court should be reversed and Judgment should be entered for the Plaintiffs.

Dated at Portland, Maine this 23rd day of March, 1988.

[signed]
Jon Holder, Esquire
Attorney for the Plaintiffs

HOLDER & GROVER, P.A.
70 Deering Street
Portland, Maine 04101
207/744-2899

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[8]ERISA does not *explicitly delegate* the power to conduct full and fair reviews to insurers *with a direct financial interest* in the claims experience under its policies. Therefore, the question is probably not whether the statute is unconstitutional, but whether any interpretation of it which permits a self-interested insurer to review its own claims denials subject only to deferential judicial review is constitutional. In many plans the role of insurer is simply that of administrator, the plan being financed either by an employer or through employee or employer or mixed contributions to a trust fund. In that case, the insurer has no direct financial interest in the outcome of its decisions and the due process requirement of the Constitution is not offended.

LIST OF PARENT COMPANIES, SUBSIDIARIES, AND AFFILIATES OF METROPOLITAN LIFE INSURANCE COMPANY, PURSUANT TO RULE 28.1

Metropolitan Life Insurance Company

Metropolitan Tower Corp.

Metropolitan Life Holdings Limited

Metropolitan Asset Management Corporation

Metropolitan Insurance and Annuity Company

Century 21 Real Estate Corporation

State Street Research and Management Company

Management and Risk Institute Inc.

Metropolitan Life Insurance Company of Illinois

Warwick Insurance Agency, Inc.

Metropolitan Realty Management, Inc.

Metropolitan Insurance Company (Bermuda) Ltd.

MetLife Capital Holdings, Inc.

MetLife General Insurance Agency, Inc.

Transmountain Land & Livestock Company

MetLife Capital Corporation

Metropolitan Tower Realty Company, Inc.

Metropolitan Tower Life Insurance Company

One Madison Avenue Corp.

Metropolitan Reinsurance Company

Metropolitan Property and Liability Insurance Company

Centennial Equities Corporation

Metropolitan Reinsurance Company (U.K.) Limited

Metropolitan General Insurance Company

State Street Fund for Foundations and Endowments

MetLife State Street Investment Services, Inc.

DTSS Incorporated

Nebraska Farms, Inc.

MetLife (UK) Limited

Metropolitan Casualty Insurance Company

200 Park Avenue, Inc.

MetLife Securities, Inc.

Marketforce International Insurance Company

640 Fifth Avenue, Inc.

MetLife Security Insurance Company of Louisiana

MetLife Capital, Limited Partnership

Corporate Health Strategies, Inc.

MetLife Holdings, Inc.

MetLife HealthCare Management Corporation

Edison Supply and Distribution, Inc.

MetLife Funding, Inc.

MetLife Security Insurance Company

Albany Life Assurance Company Limited

Doubletree, Inc.

Horsco Corporation

Metropolitan Life Insurance Company of Canada

Future Focus Health Systems Limited

Albany Pension Managers and Trustees Limited

Morguard Resources Limited

Albany Home Loans Limited

MetLife HealthCare Network of Northern California, Inc.

MetLife HealthCare Network of Kansas City, Inc.

Management Associates, Inc.

First General Insurance Company

Cross & Brown Company

MetLife Capital Credit Corporation

MetLife Marketing Corporation

MetLife Credit Corp.

Metropolitan Life Financial Services Limited

MetLife Security Insurance Company of New York

Albany Life Group Services Limited

Innco Corporation

Comprise Hotel Corporation

Metropolitan Insurance Company

Morguard Group Limited

Albany General Insurance Company Limited

Morguard Investments Limited

Morguard Trust Company

MetLife HealthCare Network of Georgia, Inc.

MetFirst Financial Co.

2154 Trading Corporation

MetLife HealthCare Network of Southern California, Inc.

MetLife HealthCare Network of Northern New Jersey, Inc.

Farmers National Company

Preferred Providers Insurance Company of America

Met West Agribusiness, Inc.

MCC Alpha Corp.

MetLife HealthCare Network of Indiana, Inc.

Western Conveyancing Corp.

MetLife HealthCare Network of South Florida, Inc.

MetLife HealthCare Network of Cincinnati, Inc.

Metmore Financial, Inc. (Del.)

MetLife Healthcare Network of Massachusetts, Inc.

Metimore Insurance Agency, Inc.

MetLife HealthCare Network of Texas, Inc.

Southern Health Plan Management, Inc.

Healthcare Network, Inc.

Cross & Brown Company of New Jersey, Inc.

Century 21 of Missouri, Inc.
MCCC Beta Corp.

MetLife HealthCare Network of Illinois, Inc.

MetFirst Insurance Agency, Inc.

MetLife HealthCare Network of Colorado, Inc.

MetLife HealthCare Network of New York, Inc.

Metmore Financial, (Cal.)

MetLife HealthCare Network of Florida, Inc.

MetLife HealthCare Nework, Inc.

Egagtrom Corporation

MetLife Healthcare Network Kentucky, Inc.

Metimore Property Management Inc. (Del.)

MetLife HealthCare Network Northeast Florida, Inc.

MetLife HealthCare Network of Columbus, Inc.

MetLife Healthcare Network of Tampa Bay, Inc.

MetLife HealthCare Network of Wisconsin, Inc.

MetLife HealthCare Network of Rhode Island, Inc.

Cross & Brown of Connecticut, Inc.

Century 21 of Michigan, Inc.

Century 21 of the Pacific, Inc.

Cross & Brown Construction Corporation

Century 21 of the Northeast Inc.

Century 21 Real Estate of Northern California, Inc.

CroBro Realty Corp.

Century 21 Real Estate Franchising Corporation of New York

Cross & Brown Associates of New Jersey, Inc.

Century 21 Insurance Services Corporation

Century 21 Real Estate of the South, Inc.

Certified Building Maintenance Corp.

Century 21 of the Southeast, Inc.

Cross & Brown Company of Missouri, Inc.

Century 21 Real Estate of Northern Texas, Oklahoma and Arkansas, Inc.

Century 21 Real Estate North Central States, Inc.

Century 21 Real Estate Corporation of Northern Illinois

DT Investments, Inc.

DTI Realty, Inc.

Doubletree Hotel Ventures, Inc.

Doubletree, Inc. of California

Doubletree of Houston, Inc.

Cross & Brown Company of Florida, Inc.

Century 21 of Ohio, Inc.

Cross & Brown Associates of New York, Inc.

Century 21 Mortgage Corp.

Century 21 of Texas, Inc.

Cross & Brown Company of Maryland, Inc.

Century 21 of New England, Inc.

Cross & Brown Residentials, Inc.

Century 21 Real Estate of the Midwest, Inc.

Century 21 Real Estate of Mississippi, Inc.

Cross & Brown Company of Georgia, Inc.

Century Securities Corp.

Century 21 Real Estate Corporation of San Diego County

Century 21 Real Estate of the Carolinas, Inc.

DTM New Orleans, Inc.

DTM Orange, Inc.

DTM Park West, Inc.

DTM Pasadena, Inc.

DTM St. Louis, Inc.

Greenville Doubletree, Inc.

INN Properties, Inc.

Moondance, Inc.

North Central Hotel Co., Inc.

Osborn Doubletree, Inc.

Randolph House, Inc.

Scottsdale Plaza Doubletree, Inc.

Tree Inns, Inc.

Tucson Doubletree Plaza, Inc.

Tuk Inns, Inc.

DTM Albuquerque, Inc.

DTM Anchorage, Inc.

DTM Atlanta, Inc.

DTM Boulder, Inc.

DTM Cupertino, Inc.

DTM Houston, Inc.

DTM Mission Valley, Inc.

DTM Salt Lake City, Inc.

DTM Santa Clara, Inc.

DTM Tampa, Inc.

DTM Tucson, Inc.

DTM Tulsa, Inc.

DTM Vail, Inc.

DTM Walnut Creek, Inc.

DTR Atlanta, Inc.

DTR Cupertino, Inc.

DTR Denver, Inc.

DTR Kansas, Inc.

DTR Salt Lake City, Inc.

DTR Santa Clara Inc.

Compri Management Corporation No. 1

Compri Management Corporation No. 3

Compri Management Corporation No. 5

Compri Management Corporation No. 7

Compri Management Corporation No. 9

Compri Management Corporation No. 11

Compri Management Corporation No. 13

Compri Realty Corporation No. 2

Compri Realty Corporation No. 4

Compri Realty Corporation No. 6

Compri Realty Corporation No. 8

Compri Realty Corporation No. 10

Compri Realty Corporation No. 12

Rodeway Inns of the Southwest, Inc.

Southwest Motels, Inc.

DTM Kansas, Inc.

Compri Hotel Systems, Inc.

Compri Management Corporation No. 2

Compri Management Corporation No. 4

Compri Management Corporation No. 6

Compri Management Corporation No. 8

Compri Management Corporation No. 10

Compri Management Corporation No. 12

Compri Realty Corporation No. 1

Compri Realty Corporation No. 3

Compri Realty Corporation No. 5

Compri Realty Corporation No. 7

Compri Realty Corporation No. 9

Compri Realty Corporation No. 11

Compri Realty Corporation No. 13

Compri Realty Corporation No. 99

Compri Management Corporation A

Compri Management Corporation B

Compri Management Corporation C

Compri Management Corporation D

Compri Management Corporation E

Compri Management Corporation F

Compri Management Corporation G

Compri Management Corporation H

Compri Management Corporation I

Compri Management Corporation J

Compri Management Corporation K

Compri Management Corporation L

MCCC Corp.